

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**


**BED-VILLAGE OAKS, LLC AND
326 COLONIAL APARTMENT
COMPLEX, LLC**

Plaintiffs,

V.

**SENECA SPECIALTY INSURANCE
COMPANY,**

Defendant.



CIVIL ACTION NO. 3:17-CV-0553-G

**DEFENDANT SENECA SPECIALTY INSURANCE COMPANY'S
MOTION TO DISMISS PLAINTIFF 326 COLONIAL APARTMENT COMPLEX, LLC**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant Seneca Specialty Insurance Company (“Seneca”) requests that this Court dismiss the claims asserted by Plaintiff 326 Colonial Apartment Complex, LLC (“Colonial”) because it lacks standing to assert them. Seneca issued an insurance policy to Plaintiff BED-Village Oaks, LLC, which later reported two claims for fire damage at the property. Seneca paid those claims, but in the process of investigating them, Plaintiff BED-Village Oaks, LLC sold the property at issue to Plaintiff 326 Colonial Apartment Complex, LLC (“Complex”). Neither Plaintiff notified Seneca of the sale, nor did they attempt to obtain its consent to any transfer of rights under the Policy it had issued to Plaintiff BED-Village Oaks, LLC. The terms of the insurance policy specifically prohibit such assignments without Seneca’s prior, written consent. Texas courts also recognize that the inability to transfer claims under an insurance policy means that the purchaser of the property lacks standing to assert any claims under it. Accordingly,

Defendant Seneca Specialty Insurance Company, Inc. requests that this Court dismiss the claims asserted against it by Plaintiff 326 Colonial Apartment Complex, LLC due to a lack of standing.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/

James N. Isbell

Attorney-in-Charge

Bar No. 10431900

jisbell@thompsoncoe.com

Christopher H. Avery

Bar No. 24069321

cavery@thompsoncoe.com

One Riverway, Suite 1400

Houston, Texas 77056

Telephone: (713) 403-8210

Facsimile: (713) 403-8299

Local Counsel:

Travis M. Brown

State Bar No. 24061890

THOMPSON, COE, COUSINS & IRONS, L.L.P.

700 N. Pearl Street, 25th Floor

Dallas, Texas 75201

Telephone: (214) 871-8200

Facsimile: (214) 871-8209

Email: tbrown@thompsoncoe.com

**ATTORNEYS FOR
SENECA INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served via the Court's electronic notification system on the following counsel of record:

Mr. Matthew R. Pearson
Mr. Jonathan C. Lisenby
Gravely & Pearson, LLP
425 Soledad, Suite 600
San Antonio, Texas 78205
mpearson@gplawfirm.com

jlisenby@gplawfirm.com
(210) 472-1111 phone
(210) 472-1110 facsimile

/s/
Christopher H. Avery